

## Fed. Mine Safety and Health Review Commission

## § 2702.6

unless indicating the extent of the deletion would harm an interest protected by the exemption pursuant to which the deletion is made.

[62 FR 55335, Oct. 24, 1997, as amended at 67 FR 60863, Sept. 30, 2002; 72 FR 71790, Dec. 19, 2007]

### § 2702.4 Materials available.

(a) *FOIA Reading Room.* Materials which may be made publicly available for inspection and copying at the Commission's on-site FOIA Reading Room, 601 New Jersey Ave., NW., Suite 9500, Washington, DC, include, but are not limited to:

(1) Final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases;

(2) Those statements of policy and interpretations which have been adopted by the agency and are not published in the FEDERAL REGISTER;

(3) Administrative staff manuals and instructions to staff that affect a member of the public;

(4) Copies of all records, regardless of form or format, which have been released to any person under this subpart and which, because of the nature of their subject matter, the Commission has determined have become or are likely to become the subject of subsequent requests for substantially the same records; and

(5) A general index of records referred to under this paragraph (a).

(b) *E-FOIA Reading Room.* Materials created on or after November 1, 1996, under paragraphs (a)(1) through (5) of this section may also be accessed electronically through the Commission's Web site at <http://www.fmshrc.gov>.

[72 FR 71790, Dec. 19, 2007]

### § 2702.5 Fees applicable—categories of requesters.

(a) When documents are requested for commercial use, requesters will be assessed the full direct costs of searching for, reviewing for release, and duplicating the records sought.

(b) When records are being requested by educational or noncommercial scientific institutions whose purpose is scholarly or scientific research, and not for commercial use, the requester

will be assessed only for the cost of duplicating the records sought, but no charge will be made for the first 100 paper pages reproduced.

(c) When records are being requested by representatives of the news media, the requester will be assessed only for the cost of duplicating the records sought, but no charge will be made for the first 100 paper pages reproduced.

(d) For any other request not described in paragraphs (a) through (c) of this section, the requester will be assessed the full direct costs of searching for and duplicating the records sought, except that the first two hours of manual search time and the first 100 paper pages of reproduction shall be furnished without charge.

(e) For purposes of paragraphs (b) through (d) of this section, whenever it reasonably appears that a requester, or a group of requesters acting in concert, is attempting to break down a single request into a series of requests relating to the same subject matter for the purpose of evading the assessment of fees, such requests will be aggregated and fees assessed accordingly.

[54 FR 3022, Jan. 23, 1989, as amended at 62 FR 55336, Oct. 24, 1997]

### § 2702.6 Fee schedule.

(a) *Search fee.* The fee for searching for information and records shall be the salary rate (that is, basic pay plus 16%) of the employee making the search. This hourly rate is listed on the Commission's Web site at <http://www.fmshrc.gov>. Fees for searches of computerized records shall be the actual cost to the Commission, but shall not exceed \$300 per hour. This fee includes machine time and that of the operator and clerical personnel. If search charges are likely to exceed \$50, the requester shall be notified of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Fees may be charged even if the documents are not located or if they are located but withheld on the basis of an exemption.

(b) *Review fee.* The review fee shall be charged for the Chief FOIA Officer's initial examination of documents located in response to a request in order to determine if they may be withheld

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from disclosure, and for the deletion of portions that are exempt from disclosure, but shall not be charged for review by the Chairman or the Commissioners. See § 2702.3. The review fee is the salary rate (that is, basic pay plus 16%) of the Chief FOIA Officer or the employee designated to perform the review. This hourly rate is listed on the Commission's Web site at <http://www.fmsihrc.gov>.

(c) *Duplicating fee.* The copy fee for each page of paper up to 8½" × 14" shall be \$.15 per copy per page. Any private sector services required, including the fee for copying photographs and non-standard documents, will be the actual direct cost incurred by the Commission. For copies prepared by computer, such as tapes or printouts, the Commission shall charge the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction or duplication, the Commission will charge the actual direct costs of producing the document(s). If duplication charges are likely to exceed \$50, the requester shall be notified of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated.

[72 FR 71791, Dec. 19, 2007]

### § 2702.7 No fees; waiver or reduction of fees.

(a) No fees shall be charged to any requester, including commercial use requesters, if the anticipated cost of processing and collecting the fee would be equal or greater than the fee itself. Accordingly, the Commission has determined that fees of less than \$20 shall be waived.

(b) Documents shall be furnished without any charge, or at a charge reduced below the fees otherwise applicable, if disclosure of the information is determined to be in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.

(1) The following six factors will be employed in determining when such fees shall be waived or reduced:

(i) The subject of the request: Whether the subject of the requested records

concerns "the operations or activities of the government";

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding";

(iv) The significance of contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities;

(v) The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure; and, if so

(vi) The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(2) The Chief FOIA Officer, upon request, shall determine whether a waiver or reduction of fees is warranted. Requests shall be made concurrently with requests for information under § 2702.3. In accordance with the procedures set forth in § 2702.3, appeals of adverse decisions may be made to the Commission within 5 working days. Determination of appeals will be made by the Commission within 10 working days of receipt.

[54 FR 3022, Jan. 23, 1989, as amended at 62 FR 55336, Oct. 24, 1997; 72 FR 71791, Dec. 19, 2007]

### § 2702.8 Advance payment of fees; interest; debt collection procedures.

(a) Advance payment of fees generally will not be required. However, an advance payment (before work is commenced or continued on a request) may be required if the charges are likely to exceed \$250.

(b) Requesters who have previously failed to pay a fee charged in timely fashion (*i.e.*, within 30 days of the date of billing) may be required first to pay